

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**





**ORIGINAL**

**74-2069**

*To be argued by  
Morton D. Gottlieb.*

**United States Court of Appeals**

**For the Second Circuit.**

**LAWRENCE WALSH and LORETTA WALSH,**

*Plaintiffs-Appellants,*

*against*

**THE CITY OF LONG BEACH, ARTHUR ZIMMER-  
MAN, DAVID LINDEN, AL SMITH and GEORGE  
TRIPANI,**

*Defendants-Appellees.*

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF NEW YORK (BRUCHHAUSEN, J.).**

**BRIEF FOR DEFENDANTS-APPELLEES.**

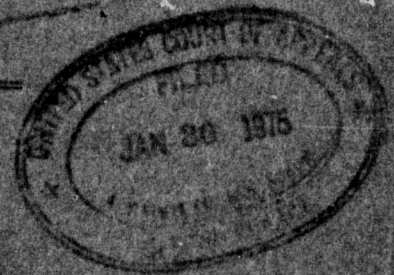
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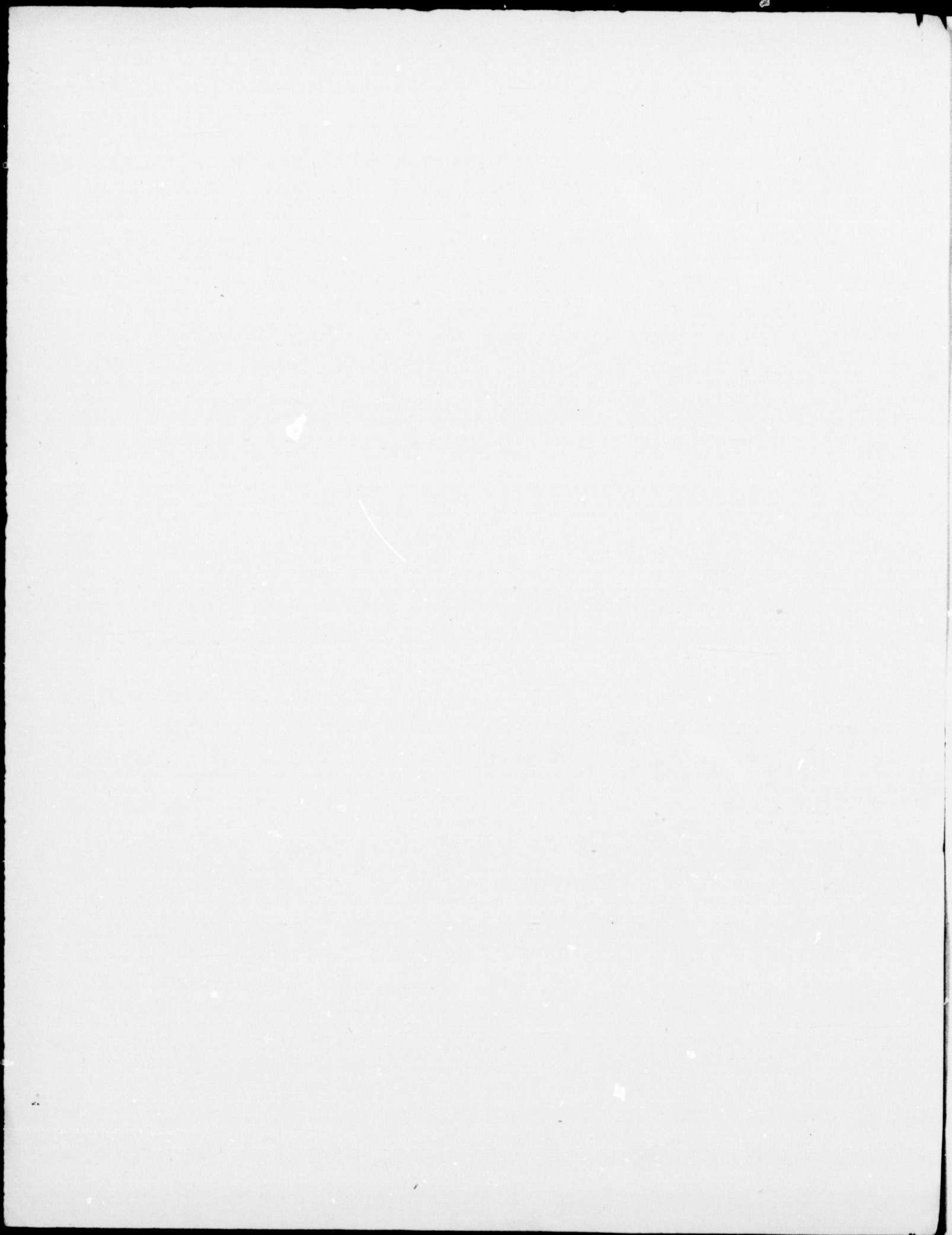
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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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LAWRENCE WALSH and LORETTA WALSH,

Plaintiffs-Appellants,

-against-

THE CITY OF LONG BEACH, ARTHUR ZIMMERMAN,  
DAVID LINDEN, AL SMITH and GEORGE TRIPANI,

Defendants- Appellees.

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On Appeal From the United States District Court  
For the Eastern District of New York  
(Bruchhausen, J.)

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BRIEF FOR DEFENDANTS-APPELLEES

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PRELIMINARY STATEMENT

The Plaintiffs-Appellants contend that Judge Bruchhausen erroneously dismissed all seven of the causes of action pleaded in their complaint, notwithstanding the fact that "neither the findings of law nor findings of fact addressed themselves to six of the causes of action." The fact is that Judge Bruchhausen's decision encompassed all seven causes of action when he stated:

"This action is brought pursuant to the Civil Rights Act, 42 U.S.C. 1982 and 1983, and Article I, Section 10, the Fourth, Fifth and Fourteenth Amendments of the Federal Constitution."



THE DECISION BELOW

Rule 56 of the Federal Rules of Civil Procedure provides that either party may move for a summary judgment at any time with or without supporting affidavits. In this case, the memoranda or law of both parties were submitted by consent of the attorneys for both parties and accepted by Judge Bruchhausen for that purpose, without other papers. Formal written notice and cross-notice of the oral motions were waived by the respective attorneys and by the Judge who decided the motions. No objection to that procedure was ever raised until the plaintiffs' attorneys prepared their brief on appeal. The dismissal of the complaint encompassed all seven causes of action, as set forth in the Preliminary Statement, supra.

Memoranda of Law were submitted to Judge Bruchhausen by both parties, in which the facts were set forth at length, and numerous Points were briefed, and citations and quotations were included in support of each Point. Judge Bruchhausen's decision was restricted to the grounds upon which he based the dismissal of the complaint. Had he not reached his conclusion on those grounds, he would

certainly have gone on to consider the Point that the Complaint should be dismissed for failure of the Plaintiffs to serve a Notice of Claim, as required by Sec. 50-e of the General Municipal Law of the State of New York and Section 257 of the City Charter of the City of Long Beach, and the Plaintiffs' failure to plead the service of such Notice in their complaint.



### THE FACTS

On August 18, 1922, the City Council of the City of Long Beach enacted a comprehensive Zoning Ordinance for the entire City of Long Beach. The Premises 425 West Olive Street is situated on the northerly side of Olive Street within the area between the easterly side of Lindell Boulevard and 100 feet west of Laurelton Boulevard, in the City of Long Beach, N.Y. That Ordinance provided (Exhibit "A") that within the said area on Olive Street, "there may be erected a detached bungalow or house for one family only on each plot of land forty feet in width by one hundred feet in depth ...."

On April <sup>29, 1927</sup> 27, 1927, an application (Exhibit "B") was filed with the Building Commissioner of Long Beach for a permit to erect a one-family residence on the aforesaid vacant land, in accordance with plans and specifications submitted therewith. The application was approved by the Building Commissioner, and on September 1, 1927, a Certificate of Occupancy for a one-family residence was issued by the Building Commissioner (Exhibit "C").

On October 9, 1950, an application was made by one Rudolph Steins, a contractor, on behalf of George Wilson, the then-owner of said premises, for a building permit to

remove the vestibule and build an open porch, at the cost of \$500.00. That application stated that the premises were then occupied as a one-family residence, and would continue to be occupied as a one-family house. (Exhibit "D").

On April 7, 1952, one David Robinson, an attorney, informed the Long Beach Building Department by letter that a client of his wished to purchase said premises, and asked to be advised if there were any violations filed against same. (Exhibit "E"). On April 9, 1952, the Long Beach Building Commissioner, Peter J. DeVine, replied that on inspection of the premises revealed that it contained three apartments, although it was located in a one-family area and had a Certificate of Occupancy for a one-family residence. (Exhibit "F").

In that same month, to wit, on April 25, 1952, the plaintiff succeeded in obtaining in one day from that same Building Commissioner by devious means, a three-family Certificate of Occupancy (Exhibit "G"), unquestionably illegal and improper on its face. On that day, one Robert J. Kleiner, an attorney who subsequently inherited the political leadership of Long Beach, prepared a letter to said Peter J. DeVine (Exhibit "H"), requesting a "corrected"



Certificate of Occupancy, apparently on the ground that said premises had been surreptitiously constructed and used in violation of the filed plans and Certificate of Occupancy. On the same day, the Corporation Counsel of Long Beach rendered an "opinion" (Exhibit "I") approving the issuance of a three-family Certificate of Occupancy to legalize an illegal use upon the ground of "what is expedient for the public" rather than what is the legal permitted use of the premises. Also on the same day, the Building Commissioner issued the Certificate of Occupancy for a three-family use (Exhibit "G"), stating therein that it was in a Residence B zone, which is restricted to one-family residences (Exhibit "J"). No building commissioner has any authority to issue a three-family certificate of occupancy for a building in a one-family district unless the building had a legal non-conforming use prior to 1922, and no one has made or can make that claim in this case. The foregoing circumstances indicate that the three-family Certificate of Occupancy (Exhibit "G") resulted from a very apparent conspiracy to circumvent the clear and unambiguous provisions of the Zoning Law, and

was on its face illegal and null and void for all purposes from the moment it was issued.

On June 11, 1968, David Linden, the then Building Commissioner of Long Beach, informed Joseph Kotkin, the plaintiff's predecessor in title, that said premises was zoned for one family (Exhibit "K"). On April 15, 1969, said Joseph Kotkin conveyed said premises to the plaintiffs for the sum of approximately \$36,000.00, as indicated by the documentary stamps on the deed, of which \$31,000.000 was furnished by the mortgagee, Richmond Hill Savings Bank, and the balance of \$5,000.000 was invested by the plaintiffs and represented their initial equity in the premises.

The plaintiffs were represented by one Harvey L. Grapek, a knowledgeable and experienced real estate attorney, who resided and maintained his office in Long Beach and still does. It must be assumed that Mr. Grapek knew or should have known that 425 West Olive Street was in a one-family zone. In any event, it was his obligation to inquire whether there were any violations of any kind recorded against the premises, as Mr. Robinson did previously (Exhibit "E"). Had such a normal and routine inquiry been made, Building Commissioner Linden would necessarily



have informed him that the property was located in a Residence B zone, which was restricted to one-family residences, as he previously informed Mr. Kotkin (Exhibit "K"), and that the purported three-family Certificate of Occupancy (Exhibit "G") was illegally issued, and was of no force or effect. However, the plaintiffs and their attorney chose not to make such an inquiry, probably to avoid alerting the Building Commissioner and possibly "spoiling" the sale. They voluntarily assumed that risk in the hope of continuing to "get away" with the illegal use.

However, neighbors soon complained of excessive numbers of people in the house and excessive numbers of parked cars blocking driveways on the block. Inspections disclosed that the house was being used as a three-family house, and on November 7, <sup>1969</sup>~~1960~~ the then Building Commissioner notified the plaintiffs by certified mail (Exhibit "L") that they were violating the zoning law and directed them to correct the violation. When subsequent inspections disclosed that the plaintiffs failed to correct the violation after the lapse of a very adequate period of time, the Building Commissioner formally notified the plaintiffs on December 24, 1970 that the three-family certificate of occupancy was illegally issued, and that "I hereby revoke and recall the said Certificate of Occupancy #A811 issued on April 25, 1952" (Exhibit "M"). Despite that notice, the plaintiffs continued

to use the property and attempted to sell it as a legal three-family house.

On March 8, 1972, the plaintiffs entered into a written agreement with one Alan Mandel to sell said property to the latter for \$39,000.00 as a legal three-family dwelling. Station Realty was the broker who brought about that contract. On June 14, 1972, said broker applied to the building commissioner for a Certificate of Compliance (Exhibit "N"), which was refused because the premises were occupied as a three-family house in violation of the Zoning Law (Exhibit "O").

At some time before June 8, 1972, the plaintiffs moved from said premises to Lyndhurst, New Jersey, and rented the apartment they vacated to a tenant, thus maintaining three-family occupancy. (Exhibit "P").

On or about June 22, 1972, the plaintiffs filed an application with the Long Beach Zoning Board of Appeals to permit the use of said premises as a three-family house, but they failed to perfect that application by filing due proof of required service of notice on owners of abutting property owners despite a written request that they do so. (Exhibit "Q"), and abandoned all efforts to legalize the three-family use by administrative procedures.

At no time did the plaintiffs ever attempt to reduce said premises to a one-family use, which required



only the removal of the kitchen equipment of two of the kitchens, and to minimize their damages by selling the house as a one-family residence. Instead, they defaulted in paying their mortgage installments which became due March 1, 1972 when all three apartments were occupied, and thereafter, and the mortgagee instituted foreclosure proceedings about June 15, 1972, and subsequently bid in the property on the foreclosure sale and became the owner thereof.

On January 9, 1973, the summons and complaint in this action was served on the defendants, without any Notice of Claim ever having been served on the defendants prior thereto.

### CONCLUSION

The premises involved herein was built as a one-family house and has always been a legal one-family house in a one-family district. When it was surreptitiously converted to an illegal residence for three families by adding two additional kitchens, its legal status remained unchanged. When the plaintiffs' predecessor in title found a way to obtain an illegal three-family certificate of occupancy from an obliging building commissioner, the premises still remained an illegal three-family house in a one-family district. When the plaintiffs purchased the premises, they and their attorney either knew or should have ascertained by the usual and normal inquiry that they were purchasing a legal one-family house masquerading as a three-family house. When a later building commissioner revoked and recalled the illegal three-family certificate of occupancy, he did nothing more nor less than his sworn duty to uphold and enforce the Zoning Law. The plaintiffs had two apparent options: (1) to attempt to legalize the three-family use by an application to the zoning board, or (2) to restore the house to a legal one-family residence by removing the two kitchens that were added without legal sanction, and sell it at the best price available. They chose neither of these options, but elected to try to sell the property as a three-family house,



and to conceal from the purchaser its truthful legal status. That effort failed, and the plaintiffs abandoned the property.

If the plaintiffs sustained any loss at all in their ill-advised venture, it would not exceed their original investment of \$5,000.00 plus their possible profit of \$3,000.00 on the prospective sale, less the broker's commission (about \$2,000.00) and less all the profits on the rents they received from the two illicit apartments for three years and the value of their own apartment during the same period. An accurate accounting would probably show a net profit on the entire transaction. It is no wonder that they chose to abandon the property and institute this action for \$60,150,000.00 instead of selling the property legitimately as a one-family house. They had nothing to lose, and the allegation that their damages exceeded \$10,000.00 is a myth.

POINT I

THE COMPLAINT IN THIS ACTION SHOULD  
BE DISMISSED BECAUSE IT DOES NOT  
ALLEGE THE SERVICE OF A NOTICE OF  
CLAIM, AS REQUIRED BY THE GENERAL  
MUNICIPAL LAW OF THE STATE OF NEW  
YORK AND THE CHARTER OF THE CITY OF  
LONG BEACH

The plaintiffs' complaint consists of seven alleged causes of action, and demands judgment against the defendants for a total sum of \$60,150,000.00. The defendants' answer consists of certain admissions and many denials of material allegations of said complaint, and four affirmative defenses, the first of which alleges that the matters in controversy are less than \$10,000.00, and the last of which alleges that the plaintiffs failed and neglected to file a Notice of Claim prior to the commencement of this action, as required by law.

Sec. 257 of the City Charter of the City of Long Beach (laws 1922 Chapter 635 as amended) provides as follows:

"(1) In any case founded upon tort a notice of claim is hereby required as a condition precedent to the commencement of an action or special proceeding against the City of Long Beach, or any officer, appointee, or employee thereof."

Sec. 50-(e) of the General Municipal Law of the State of New York provides as follows:



- "1. In any case founded upon tort where a notice of claim is required by law as a condition precedent to the commencement of an action or special proceeding against a public corporation, as defined in the general corporation law, or any officer, appointee or employee thereof, the notice shall comply with the provisions of this section and it shall be given within ninety days after the claim arises."

Due service of a notice of claim is a condition precedent to the institution of a cause of action against a municipality or municipal corporation, or any officer, appointee or employee thereof, and must be pleaded and proved by the plaintiff.

Barchet v. New York City Transit Authority,  
1967, 20 N.Y. 2d 1, 291 N.Y.S. 2d 289,  
228 N.E. 2d 361.

Berg v. City of Long Beach,  
1959, 19 Misc. 2d 317, 186 N.Y.S. 2d 401.

Ruggio v. City of Oswego,  
1955, 4 Misc. 2d 29, 148 N.Y.S. 2d 82.

Pascucci v. Nassau County,  
1957, 8 Misc. 2d 229, 165 N.Y.S. 2d 797.

Balin v. Larkin,  
1970, 62 Misc. 2d 949, 310 N.Y.S. 2d 402,  
modified on other grounds, 36 A.D. 2d 530,  
318 N.Y.S. 2d 568, appeal dismissed  
28 N.Y. 2d 800, 321 N.Y.S. 2d 906, 270  
N. E. 2d 725.

Webster's Dictionary defines a tort, in law, as "a wrongful act (not involving a breach of contract) resulting in an injury, loss, or damage, for which the injured party can bring civil action."

Ballantine's Law Dictionary defines a tort as "A wrong independent of contract" and as "An injury or wrong committed,

either with or without force, to the person or property of another.

Each and every act alleged by the complaint to have been committed by the defendants fits exactly the foregoing definitions of the word "tort". Hence when Sec. 50-e of the General Municipal Law and Sec. 257 of the City Charter state that "In any case founded upon tort" a notice of claim is required, the instant case is exactly the type of case the legislature had in mind. It must be presumed that they are using the word "tort" in its usual and legal meaning.

The leading and basic pronouncement of the highest court of New York State on this subject is the case of *Thomann v. City of Rochester*, 256 N.Y. 165, 176 N.E. 129, in which Chief Justice Cardozo stated:

"The requirement is strict, but not so strict as to be arbitrary. A judgment against a municipal corporation must be paid out of the public purse. Raids by the unscrupulous will multiply apace if claims may be postponed till the injury is stale. The law does not condemn as arbitrary a classification of rights and remedies that is thus rooted in the public needs (*Frasch v. City of New Ulm*, 130 Minn. 41, 43; *O'Neil v. City of Richmond*, 141 Va. 168; *Sheehy v. City of New York*, 160 N.Y. 139, 143). The time allowed is short, yet adequate in general to enable diligence to move (*Frasch v. City of New Ulm*, *supra*, p. 44).

Nothing in this record suggests disability or ignorance. There being opportunity for knowledge and competence to act, the statute gives the rule to which obedience is due..."



"Not lack of opportunity, therefore, but indifference or forgetfulness is responsible for the plaintiff's plight. He had the privilege if he had acted promptly upon the discovery of the nuisance to make demand for all the damages that had developed in the past and all that might develop afterwards until the conclusion of the trial. He ignored the obvious remedy that was then ready at his hand. He waited for four years till the city was about to discontinue the offensive and unlawful use, and then came forward with a claim for the accumulated loss. This is the very evil that the statute was designed to cure.

We are not forgetful of the fact that the bad conditions at the dump were known to the defendant's mayor and to other public officers. The plaintiff was not relieved thereby of the duty to adhere to the statutory forms. What satisfied the statute is not knowledge of the wrong. What the statute exacts is notice of the "claim". (emphasis supplied). The Legislature has said that a particular form of notice, conveyed with particular details to particular public officers, shall be a prerequisite to the right to sue. The courts are without power to substitute something else."

The plaintiffs allege two specific acts as the cause of their alleged damages, to wit, the revocation of the three family certificate of occupancy on December 24, 1970, and the refusal to issue a certificate of compliance on June 22, 1972. These are the dates of the alleged torts from which the time to file a Notice of Claim started to run.

The plaintiffs, in a vain effort to circumvent this requirement, state that it does not apply to suits in equity nor to those involving injuries of a continuing nature. In support of that contention, they cite cases which involved

continuing wrongs and which demanded essentially equitable relief, such as an injunction to restrain a continuing trespass, with incidental damages. In the present action, the acts complained of are specific incidents which occurred at a specific time and place, and for which the plaintiffs are demanding over \$60,000,000., hardly incidental by any standard. The equitable relief demanded by the complaint is not even incidental to the claim for damages, because any equitable relief became academic when the plaintiffs abandoned the premises before the commencement of this action.

The brief of the Plaintiffs-Appellants (pages 18 and 19) cites the case of Sexstore v. City of Rochester (32 A.D.2d 73, 301 N.Y.S. 2d 887). That action was brought against the City for negligently issuing a certificate of occupancy for a building inhabited in violation of the residency laws. The question involved was not whether the filing of a Notice of Claim was required, but only whether it was timely. It was agreed by the parties and the court that the filing of the Notice was a necessary prerequisite to the institution of the action. The Court held:

"The filing of the notice of claim was timely under General Municipal Law Sections 50-e and 50-i,



as it was within ninety days after the violations were discovered. The running of the ninety day period should be measured not from the time of the negligent act but from the date the negligent act produced injury to the plaintiffs."

In the case at bar, the plaintiffs allege that they sustained injury (1) when the three-family certificate of occupancy was revoked and (2) when they were refused a certificate of compliance. They failed to file a Notice of Claim within 90 days thereafter, nor have they filed such Notice at any time before or since this action was instituted. Their failure to file a Notice of Claim and to plead such filing in their complaint renders the complaint fatally defective, and requires that it be dismissed, entirely apart from all other considerations.

POINT II

THE BUILDING COMMISSIONER  
AND HIS INSPECTORS WERE  
FULLY JUSTIFIED IN RE-  
VOKING THE ILLEGAL THREE-  
FAMILY CERTIFICATE OF  
OCCUPANCY AND REFUSING  
TO ISSUE AN IMPROPER CER-  
TIFICATE OF COMPLIANCE.

The Zoning Ordinance of the City of Long Beach, con-  
stituting Article I of Chapter 9 of the Municipal Code of  
the City of Long Beach, provides in Section 9-112(c) :

"It shall be the duty of the Commissioner of Buildings  
to enforce the provisions of this article but this  
provision shall not limit the power of all law  
enforcement officers to enforce the provisions thereof."

Section 9-112(f) of said Municipal Code states:

"The Building Commissioner shall revoke any permit  
heretofore or hereafter issued where the building,  
structure or premises covered by such permit are  
used or permitted to be used, or designed or intended  
to be used in violation of the provisions of this  
article, except where such non-conforming use is  
permitted by direction of the Board of Appeals as  
herein provided. Such revocation shall become effective  
when a written notification to such effect, signed by  
the Building Commissioner is mailed to the owner or  
occupant of the premises in question." (emphasis supplied).

The individual defendants are alleged in the complaint herein  
to be city officials, to wit: Building Commissioners and  
Building Inspectors. As such, their acts were performed wholly  
within the scope of their official duties and responsibilities.



Pritt v. Johnson,

D.C. Pa. 1967, 264 F Supp. 167

Hoffman v. Holden,

C.A. Or. 159, 268 F. 2d 280

Hardy v. Kirchner,

D.C. Pa. 1964, 232 F. Supp. 751

Selico v. Jackson,

D.C. Cal. 1962, 201 F. Supp. 475

Dunn v. Estes,

D.C. Mass. 1953, 117 F. Supp. 146

Ahlstrand v. Lethert,

D.C. Minn. 1970, 319 F. Supp. 283 -

Wilson v. Webster,

D.C. Col. 1970, 315 F. Supp 1104

42 U.S.C. Section 1983 was not intended to be in derogation of common law immunities, nor was it enacted to discipline local law enforcement officials.

Bauers v. Heisel,

C.A.N.J. 1966, 361 F.2d 581, certiorari denied  
87 S.Ct. 1367, 386 U.S. 1021, 18 L.Ed 2d 457.

Smith v. Dougherty,

C.A. Ill. 1961, 286 F. 2d 777, certiorari denied  
82 S.Ct. 180, 368 U.S. 903, 7L Ed 2d 97

Roberts v. Pepersack,

D.C. Md. 1966, 256 F. Supp. 415, certiorari denied  
88 S. Ct. 175, 389 U.S. 877, 19 L. Ed 2d 165

Basista v. Weir,

D.C. Pa. 1964, 225 F. Supp. 619, aff'd in part,  
reversed in part on other grounds 340 F.2d 74

Where local officials act wholly within their official responsibilities and do not intentionally cooperate in any fraudulent scheme, the resulting tort is not one embraced within Sec. 1983, and the tort is solely that of the private individuals, the redress of which rests with state courts.

Dinwiddie v. Brown,

C.A. Tex. 1956, 230 F. 2d 465, certiorari denied  
76 S.Ct. 1041, 351 U.S. 971, 100 L.Ed. 1490,  
rehearing denied 77 S. Ct. 29, 352 U.S. 861,  
1 L. Ed. 2d 72.

In the case of Wise v. City of Chicago, et al. C.A. Ill. 1962, 308 F.2d 364, one Arthur Wise was fined in the Municipal Court of Chicago for violating the building code and appealed to the Illinois Appellate court without paying the fine. Instead of issuing an execution against property, the Corporation Counsel's office secured an order of commitment. Despite the fact that Wise was ill, he was arrested and removed to the prison hospital, where he died three months later. His administratrix brought an action in the Federal District Court under the civil rights statute Title 42, U.S.C. Sec. 1983, against the City of Chicago, the Corporation Counsel and an assistant Corporation Counsel. The amended complaint was dismissed for insufficiency, and on appeal to the Court of Appeals it was held that plaintiff was not entitled under that statute to recover against a municipal corporation and the officials of that corporation for alleged deprivation of the decedent's civil rights. Circuit Judge Knoch held for the unanimous court:

"Plaintiff invoked the jurisdiction of the District Court under Title 42, U.S.C.A. Sec. 1983. In Monroe v. Pope, supra (365 U.S. 187, 81 S. Ct. 484, 5 L.Ed 2d 505) the United States Supreme Court held that Congress did not undertake to bring Municipal corporations within the ambit of that statute. In Stift v. Lynch, supra (page 239 of 267 F. 2d) Chief Judge Duffy, speaking for this court, said:

'In Easton (eaton) v. Bibb, 7 Cir. 217 F. 2d 446, 449, we cited with approval Loughlin v. Rosenman 82



U.S. App.D.C. 164, 163 F. 2d 838, as authority for the proposition that prosecuting officials are not to be amerced by actions under the Federal Civil Rights Act for their actions in connection with official prosecutions even though it is alleged that such acts were done maliciously.'

... the ruling of the District Court must be affirmed."

The instant case similarly involves a violation of a zoning law, within the jurisdiction of the Building Department of a municipality. Here, there was no prosecution for the violation, and the municipal officials involved were the Building Commissioner and his subordinate building inspectors. Like the Corporation Counsel and his assistants in the Wise case, they were charged with the enforcement of the building and zoning ordinances of the municipality, and had alternative remedies at their disposal. However, instead of selecting the more severe option of court prosecution, they elected to discharge their obligation to enforce the law by inspecting the premises involved and writing letters concerning the violations they found. In other respects, the two cases are so similar that the rule enunciated in the Wise case should be applied to the instant case, and the complaint should be dismissed for insufficiency on the same ground.

Ransom v. Philadelphia

(1970, D.C.Pa.) 311 F. supp 973

Bennett v. Gravelle

(1971, D.C. Md.) 323 F Supp. 203, aff'd (CA 4)  
451 F 2d 1011, cert. denied 407 U.S. 917, 32 L ed  
2d 692, 92 S. Ct. 2451

Papagranskis v. Samos

(1950 CA 4 Va.) 186 F 2d 257, cert. denied,

In Point IV of their brief, the plaintiffs concede that a municipal corporation is not a "person" within the meaning of Title 42, U.S.C. Sec.1983, but attempt to justify the maintenance of their action against the individual defendants to accomplish indirectly what they cannot accomplish directly. They cite several cases on page 25, none of which apply to the instant case because they were class actions involving racial or minority discrimination, which is completely absent from the present action. They then cite a number of cases on pages 26 to 28, the most recent of which is this Court's decision in the case of Simmons v. Wetherell, 472 F.2d 509 (2 Civ. 1973), in which it was held:

"(1) As Judge Blumenfeld recognized, the basic question presented by this suit is whether the attempts at condemnation amount to an unconstitutional taking, or whether they simply constitute at most tortious interference by the state officials with Simmons' property rights. Judge Blumenfeld found that the latter situation was presented by the attempts at condemnation here; we agree.

\*\*\*\*\*

(2, 3) This is not to say that Simmons may not have a valid tort claim, based upon the effects of the state's apparent ineptitude here. But the appropriate forum for the assertion of such a claim is the state court, where Simmons now has an action, brought pursuant to the waiver of immunity in the 1969 Special Act, pending. Whatever else the state's actions here amounted to, they did not constitute a taking within the ambit of Sec. 1983. See Jimmie's Inc. v. City of West Haven, 436 F.2d 1339 (2d Cir.) cert. denied, 403 U.S. 931, 91 S.Ct. 2254, 29 L.Ed.



2d 710 (1971) (emphasis supplied).

The purported certificate of occupancy for a three-family house was invalid on its face from the moment of its issuance, and had no legal effect at any time. The Building Commissioner had the duty to disregard it as a nullity and/or to revoke and recall it, as he did, without the necessity of a formal hearing. Even before he revoked it, that certificate was just as ineffective as it was after it was "revoked and recalled." Any hearing would have been an empty gesture, and the law does not require a vain act. The revocation did not deprive the plaintiffs of any rights or privileges that they possessed before the revocation.

POINT III

A CITY IS NOT PRECLUDED OR ESTOPPED FROM  
ENFORCING THE PROVISIONS OF AN ORDINANCE  
BY REASON OF ANY ACT OR CONDUCT ON THE PART  
OF CITY ADMINISTRATIVE OFFICERS IN PRIOR  
ADMINISTRATIONS.

Estoppel is not applicable to a municipality acting  
in a governmental capacity.

People v. System Properties Inc.

281 AD 433, 120 N.Y.S. 2d 269, settle 128 N.Y.S.  
2d 583, Mod. on other grounds 2 N.Y.S. 330,  
160 N.Y.S. 2d 589;

Hiltzik v. Weaver,

16 Misc. 2d 629, 183 N.Y.S. 2d 396, affd 7 AD  
2d 1023, 185 N.Y.S. 237; app. gr. 8 AD 2d 723,  
187 N.Y.S. 2d 987;

People v. Minuse,

190 Misc. 57, 70 N.Y.S. 2d 426, revd on other  
grounds, 273 AD 457, 78 N.Y.S. 2d 309

A municipality in the exercise of its sovereign power  
is not to be obstructed by prior unauthorized acts or omissions  
of its agents or officers. *People v. Baldwin*, 197 AD 285, 188  
N.Y.S. 542, affd 233 N.Y. 672.

Clearly, an estoppel may not be invoked against public  
officers performing their legal duty. If an act is illegal  
it cannot be justified because some prior administration has  
also disregarded the law. *Schieffelin v. Hylan*, 106 Misc. 34,  
174 N.Y.S. 506, affd 188 AD 192, 176 N.Y.S. 809, affd 227 N.Y. 593.



While it is true that a municipality may be estopped where it is acting in a corporate or proprietary capacity, it cannot be estopped to assert its governmental powers as to acts within its governmental capacity. The enforcement of the zoning ordinance is a governmental function.

Gilliland v. Lincoln Alliance Bank & Trust Co.  
145 Misc. 827, 261 N.Y.S. 826, mod. in  
other respects 239 AD 68, 264 N.Y.S. 779,  
affd. 264 N.Y. 517.

A municipality is not estopped from enforcing its zoning laws either by the issuance of a building permit or by laches.  
Yonkers v. Rentways, Inc. 304 NY 499.

In the case of Premium Bond Corporation v. The City of Long Beach (249 A.D.756) the Appellate Division unanimously held:

"In our opinion, the City of Long Beach is not estopped from enforcing the provisions of the zoning ordinance because of any acts or conduct on the part of any of its administrative officers ..."

The individual defendants in the instant action were acting within their jurisdiction and authority in enforcing the provisions of the zoning ordinance.

The plaintiffs seem to rely heavily upon the provisions of the Multiple Residence Law of New York State, which took effect July 1, 1952. The illegal three-family certificate of occupancy on which the plaintiffs predicate their claims herein

was issued April 25, 1952, and could not have been issued pursuant to the Multiple Residence Law. Section 302 of that Law, entitled "Certificate of occupancy", sets forth in subdivision 3 the requirements for obtaining a certificate of occupancy for an "old multiple dwelling not requiring such certificate," as follows:

The department shall, on request of the owner or of his certified agent, issue a certificate of occupancy for any old multiple dwelling not requiring such certificate, provided that, after an inspection by the department, no violations are found against such dwelling.

The premises involved in this case could not qualify because it was never a legal multiple dwelling, having been constructed as a one-family house with a one-family certificate of occupancy, and never having been legally converted to a three-family house pursuant to a building permit. The additional two kitchens were surreptitiously "bootlegged" without benefit of a building permit and without regard for compliance with the building requirements and safeguards required for a legal three-family house. It should be noted that a certificate of occupancy under Section 302 (3) requires that an inspection be made and no violations be found. There was not even a pretext of an inspection before the so-called three-family certificate was issued.



When Subdivision 5 of Section 302 refers to "a certificate", it refers to a certificate issued in compliance with Subdivisions 1 to 4, inclusive, of that section. It could not possibly contemplate the inclusion of a one-family house illegally converted to house three families, in a one-family residence zone, for which a purported three-family certificate had been issued before the effective date of the Multiple Residence Law and without any inspection or other compliance with the safeguards provided by law for a three-family house in effect at the time of its issuance. It follows that the Multiple Residence Law has no application to the facts in this case.

#### POINT IV

##### THE ORDER DISMISSING THE COMPLAINT SHOULD BE AFFIRMED

There is a growing tendency among a certain segment of the bar to consider every alleged wrong, whether real or fancied, to be a violation of their client's civil rights, so that an action may be instituted in the United State court for millions of dollars in punitive damages, instead of an action in the State court for the actual provable damages, if any, that the client sustained. It is easier to prove injured feelings than to prove pecuniary loss, and demands for multiple millions of dollars sometimes bring better settlements than minimal demands. That tendency results in proliferating litigation in the federal courts which should properly be in the State courts or, in cases involving minimal damages to property such as this, might not be deemed of sufficient moment to be litigated at all. The tendency to exaggerate damages and multiply federal lawsuits where no ethnic or minority groups is involved should not be encouraged, but such actions should be relegated to their proper place



in the scheme of our jurisprudence. For all of the reasons set forth in this brief, the order of the Court below should be affirmed.

Respectfully submitted,

MORRIS H. SCHNEIDER,  
Corporation Counsel  
of the  
City of Long Beach,  
Attorney for  
Defendants-Appellees,  
One West Chester Street  
Long Beach, N.Y. 11561  
516-431-1000

Morton D. Gottlieb  
Assistant Corporation Counsel,  
Of Counsel





# EXHIBIT A.

-18-

On the South side of Broadway, extending Southerly to the Boardwalk and from New York Avenue to the Westerly side of Riverside Boulevard and from the South side of Front Street and extending southerly to the Boardwalk from the Easterly side of Riverside Boulevard to the Westerly side of Roosevelt Boulevard there may be erected on each parcel of land twenty feet in width by the depth of the lot, one or two buildings, one of which may front on Broadway or Front Street and one of which may front on the Boardwalk, to be constructed of brick, tile block, or other fireproof material to be not less than two stories nor more than seven stories in height above the level of the Boardwalk, which buildings may be used for stories with apartments, hotels, bathing pavilions, theatres or other amusement enterprises or business enterprises, excepting however that no manufacturing shall be conducted on said premises and no building that shall constitute a public or private nuisance, excepting however that no stores shall be erected facing on Front Street or Broadway, all of which buildings when so erected shall set back ten feet from the building line of Broadway or Front Street, excepting on streets where buildings are already erected, in which instance the set back shall conform with the set back of the majority of the buildings now erected on the block.

AMENDED  
Feb. 3-1929  
See A.

Amended Oct. 5, 1923  
See "W"

Amended Sept. 9, 1924  
See "W"

Amended Dec. 7, 1926  
As to Bl. 35-See "W"

Amended May 10, 1917  
as to Bl. 38-See "W"

South of Park Street from the East side of Lindell Boulevard to one hundred feet West of Laurelton Boulevard, on Walnut and Olive Streets, there may be erected a detached bungalow or house for one family only on each plot of land forty feet in width by one hundred feet in depth with a private automobile garage with asbestos shingle roof or similar fireproof roof, building to be constructed of frame with stucco finish, hollow tile, brick or

# EXHIBIT A

-19-

concrete, to cost five thousand (\$5,000.) Dollars and to set back twenty feet from the building line of the streets on which the property fronts, excepting where buildings are already erected, in which instance the set back shall conform with the set back of such buildings now erected.

Amended Apr. 25, 1924  
See "W"

Amended July 7, 1925  
See "W"

Amended Apr. 13, 1926  
as to garages  
See "G"

One hundred feet south of Park Street from the West side of Lindell Boulevard to the Easterly side of May Walk on Walnut and Olive Streets and the Northerly side of Beech Street and on the Westerly side of Lindell Boulevard and both sides of Grand Boulevard, and on May, June, July, August, September, October, November, December, January and February Walks there may be erected a detached private bungalow or dwelling house on each parcel of land forty feet in width by fifty feet in depth to cost at least Two thousand (\$2,000.00) Dollars, to be constructed of frame, hollow tile, brick or stucco, with an asbestos shingle or roof of other semi fireproof material and which building when so erected shall set back five feet from the building line of the respective boulevards, streets and walks on which the property fronts.

Amended Apr. 28, 1925  
See "G"

No building to be erected on any residential plot within the city limits unless the same shall have a Queen Ann roof, or gable or hip roof, as herein specified, and no building excepting buildings within the business area shall be constructed with a roof known as a flat roof, and no wooden shingles shall be used upon the roof of any building erected within the limits of the City of Long Beach.

Amended Mar. 7, 1923  
See "B"

On both sides of Beech Street from the Westerly side of Lindell Boulevard to one hundred feet West of the Westerly side of Laurelton Boulevard there may be erected a private residence not less than two stories in height with a private automobile garage

Amended Apr. 11, 1917  
as to Bldg. height  
See "B"



## EXHIBIT B

PERMIT No. 2692DEPARTMENT OF BUILDINGS  
CITY OF LONG BEACH

NOTICE.—this Application must be filed in DUPLICATE and ONE copy sworn to by Applicant. Plumbing Applications are to be filed separately. One set of Plans must be filed on linen or cloth.

USE. Residence - 1 Family NUMBER OF PLANS FILED 7  
 HEIGHT. 2 story  
 AREA. 24 1/2 x 58 2/3  
 APPLICATION No. 180 1927 RECEIVED 7-29-27  
 LOCATION Union St. bet. North side 220' West of Safford St.  
 CITY OF LONG BEACH, 7-28-1927

TO THE COMMISSIONER OF BUILDINGS:

Application is hereby made for approval of the plans and specifications herewith submitted, and made a part hereof, for the erection or alteration of the building therein described,—with the understanding that if no work is performed hereunder within one year from the time of issuance, this approval shall expire; and the applicant agrees to comply with all the rules and regulations of the Zoning Laws of the City of Long Beach, all provisions of the Building Code of the City of Long Beach, and with every other provision of law relating to the erection or alteration of said building in effect at this date.

(Sign Here) I.tering Construction Co., inc. APPLICANT  
G. F. Hart

When satisfactory evidence has been submitted that Compensation Insurance has been obtained and when properly signed by the Commission of Buildings of the City of Long Beach, this application becomes a PERMIT as required by the Building Code of the City of Long Beach, to perform such work as is described in the foregoing statement and the attached plans and specifications which are a part hereof.

EXAMINED AND APPROVED

APPROVED 7-29-1927

Edw. A. Stinson  
 Commissioner of Buildings, City of Long Beach

STATE OF NEW YORK, }  
 CITY OF LONG BEACH, } ss. Clifford F. Hart (Applicant)  
 COUNTY OF NASSAU, }

being duly sworn, deposes and says: That he resides at Number 540 West 123rd St  
 in the City of New York in the State of New York  
 in the County of N.Y. that he is representing Roland V. Smith  
 owner in fee of all that certain lot, piece or parcel of land, situate, lying and being in the City of Long  
 Beach, aforesaid, and known and designated as Block 63 Lots 63-64  
 and hereinafter more particularly described; that the work to be done upon the said premises, in accordance  
 with the accompanying detailed statement in writing of the specifications and plans of such proposed work,  
 including all amendments to the same which may be filed hereafter—and also all Elevator and Plumbing  
 work (if any) proposed to be done upon the same premises and specified in separate applications, and all

# EXHIBIT B

subsequent amendments thereto—is duly authorized by Roland V. Smith  
 and that I am duly authorized by the aforesaid Owner  
 to make application for the approval of such detailed statements of specifications  
 and plans (and amendments thereto) in his behalf.

Deponent further says that the full names and residences, street and number, of the owner or owners  
 of the said land, and also of every person interested in said building or proposed building, structure or pro-  
 posed structure, premises, wall platform, staging or flooring, either as owner, lessee, or in any representa-  
 tive capacity, are as follows:

## NAMES AND ADDRESSES

Owner Roland V. Smith  
35 East 37<sup>th</sup> Street  
New York City

Lessee .....

Architect Alexander T. Saxe

~~Builder~~ Steeling Construction Co Inc 441 Longton Ave  
~~Superintendent~~ N. Y. C.

The said land and premises above referred to are situate, bounded and described as follows, viz.: BE-

GINNING at a point on the north side of Olive Street

distant 220 feet west from the corner formed by the intersection of

Lafayette Boulevard and Olive Street

running thence 40 Westerly feet; thence 100 Northerly feet;

thence 40 Easterly feet thence 100 Southerly

feet;

to the point or place of beginning—being designated on the map as Block No. 31 Lot No. 63-64

Sworn to before me, this 29<sup>th</sup>

day of April 1927 } Clifford F. Hart  
Notary Public for Roland V. Smith

PERMIT

INGS

CITY OF LONG BEACH



EXHIBIT B  
PERMIT No. 2692

# DEPARTMENT OF BUILDINGS

CITY OF LONG BEACH

NOTICE--This Application must be filed in DUPLICATE.  
Use YELLOW Color for Specifications of "Frame" Buildings.

APPLICATION No. 180 1927 RECEIVED 7-27-27

LOCATION Blue St. North side 240 W. 1st St. to 1st St. E. W. A. Stinson

Examiner

## SPECIFICATIONS

- (1) NUMBER OF BUILDINGS TO BE ERECTED: *house and garage*  
Any other buildings on lot or permit granted for one? *no*  
Any buildings to be demolished? *no*
- (2) ESTIMATED COST (exclusive of lot): Of each building \$15000. and \$1000.  
Of all buildings \$16000.
- (3) OCCUPANCY (in detail):  
*one family home*
- (4) SIZE OF BUILDING: At street level 22'-6" feet front 56'-8" feet deep  
At typical floor level 22'-6" feet front 56'-8" feet deep  
Height 2 Storey + cellar stories 28' feet
- (5) FOUNDATIONS: Character of the ground *sandy*  
Depth below <sup>Grade</sup> ~~sub~~ 3'-0" 4'-0"  
Material on which they are to rest 12" concrete footing
- (6) FOUNDATION WALLS: Material *Mortar*  
*cement blocks - 12" below grade, 8" above*
- (7) Of what material will the frame be constructed *Spence*  
What will be the size of the sills 4 x 6 corner posts? 4 x 6 middle posts? x  
enterties? x plates? 4 x 4 braces? 2 x 4 filling in studding 2 x 4
- (8) How to be framed *balloon* Outside frame diagonally sheathed *yes*
- (9) Will the outside frame be brick filled? *no*

EXHIBIT B.

(10) If building is not to be used for dwelling, hotel or lodging house, give proposed floor capacity:

1st tier

2d tier

3d tier

(11) Of what material will partitions be built? *2 x 7 Lath & Plaster*

Will main fore and aft partitions extend to underside of roof beams? *No*

(12) Will the roof be peaked, flat or mansard? *peaked* Material of roofing *Spanish tile*

(13) Will cellar floors be concreted? *yes*

(14) How will building be heated? *steam heat*

*Clifford F. Hart*  
Applicant

(Sign here)

*1-28-1927*



EXHIBIT C.  
CITY OF LONG BEACH  
DEPARTMENT OF BUILDINGS

*Certificate of Occupancy*

ISSUED *Sept 21, 1927* TO *Rowland H. Smith*

PREMISES *425 W. Olive St - Block 36 - Lots 63 & 64*

in accordance with Chapter 10 of the Building Code of the City of Long Beach.

THIS CERTIFIES that the ~~ALTERED~~  
NEW BUILDING situated on the above mentioned premises has been

completed and conforms substantially to the approved plans and specifications on file in my office and to the requirements of Chapter 10 of the Building Code and permission is hereby granted for its occupancy for the purpose specified below:

Stories	Classification	Construction
<i>Two (2)</i>	<i>Private Residence &amp; Garage</i>	<i>Frame &amp; Stucco</i>

Floors	Occupancy	Live Load Per Sq. Ft. in Pounds	Number of Persons
Cellar	<i>Heating Plant &amp; Storage</i>	—	—
<del>Basement</del>			
1st Floor	<i>One (1) family</i>	<i>40#</i>	<i>14 to 16</i>
2nd Floor			
3rd Floor	<i>Attic Storage</i>	<i>40#</i>	—
4th Floor			
5th Floor			
6th Floor			

Application

No. *507-9/1/1927*

*Edw. A. Stimpson*  
Building Commissioner of Long Beach

EXHIBIT D

15470

PERMIT No.

DEPARTMENT OF BUILDINGS

CITY OF LONG BEACH

NOTICE — This Application must be sworn to by Applicant.  
Plumbing Applications are to be filed separately.

Application for Minor Structures, Alterations and Repairs

Application No.

19

RECEIVED

LOCATION *425 West Olive Str*

HEIGHT

USE

AREA

TO THE COMMISSIONER OF BUILDINGS:

Application is hereby made for approval of the plans and specifications herewith submitted, and made a part hereof for the erection or alteration of the building therein described,—with the understanding that if no work is performed hereunder within one year from the time of issuance, this approval shall expire; and the applicant agrees to comply with all the rules and regulations of the Zoning Laws of the City of Long Beach, all provisions of the Building Code of the City of Long Beach, and with every other provision of law relating to the erection or alteration of said building in effect at this date.

(Sign Here)

*Rudolf Steins*

APPLICANT

When satisfactory evidence has been submitted that Compensation Insurance has been obtained and when properly signed by the Commissioner of Buildings of the City of Long Beach, this application becomes a PERMIT as required by the Building Code of the City of Long Beach, to perform such work as is described in the following statement and the attached plans which are a part hereof.

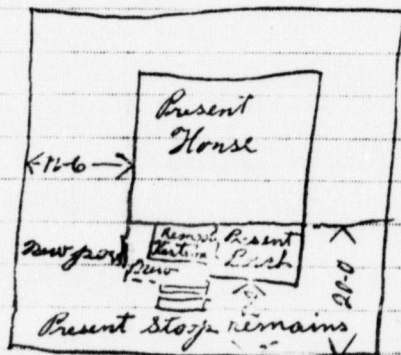
EXAMINED AND APPROVED

APPROVED *10-9-50* 19

*P. J. McKeen*  
Commissioner of Buildings, City of Long Beach

(Here state definitely nature of proposed work)

I propose to *remove present vestibule and build a open porch*



How occupied at present *1 Family*  
How to be occupied *1 Family*  
Cost \$ *500.00 -*

Plans must be submitted in duplicate, one set to be filed with the Department, and the duplicate set thereof (bearing the approval of the Commissioner of Buildings) shall be kept on the work and exhibited on demand to any Building Inspector of the City of Long Beach.

PERMIT MUST BE RECEIVED BEFORE BEGINNING WORK

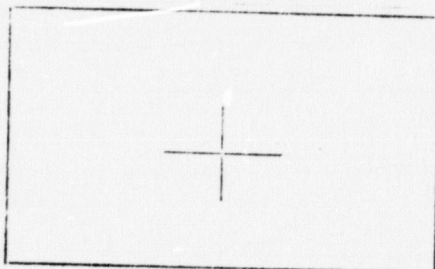


EXHIBIT D.

Date Oct. 9, 1950

House Number 425

W. Olive Str



Block 36

Lot 63-64

STATE OF NEW YORK,  
CITY OF LONG BEACH,  
COUNTY OF NASSAU,

} ss.:

Rudolf Steins

Applicant

being duly sworn deposes and says: That he resides at 355 E. Fulton Str  
Long Beach, that he is the agent for the (owner-lessee) of the  
premises above described and is duly authorized to make this application; that the work to be done is duly  
authorized by the owner.

Deponent further says that the full names and residences of the owners or lessees of said premises are

Owner George Wilson Residence 425 West Olive Str  
Lessee \_\_\_\_\_ Residence \_\_\_\_\_

Sworn to before me this

9th day of October 1950

Adelina Cole  
Notary Public

Rudolf Steins

ADELINA COLE, Applicant

Notary Public, New York

My commission expires on 10/30, 1951

Date signed off \_\_\_\_\_ 19 \_\_\_\_

that the above report is true in every respect and that the work indicated has been  
done in the manner required by the Rules and Regulations of this Bureau, except where reported adversely.

Signed \_\_\_\_\_  
Inspector

BUILDING  
PERMIT

DEPARTMENT OF BUILDINGS  
CITY OF LONG BEACH

EXHIBIT E.

DAVID ROBINSON ✓  
COUNSELOR AT LAW  
56 BAY STREET  
ST. GEORGE, STATEN ISLAND I  
NEW YORK  
SAINT GEORGE 7-6043

April 7th, 1952.

Building Department,  
City of Long Beach,  
Long Island, N. Y.

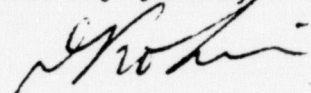
Gentlemen:-

A client of mine is purchasing premises #425 West  
Olive Street, Long Beach, Long Island.

Will you kindly advise if there are any violations  
filed against same.

If there is any charge for this kindly mail me your  
bill. I would like to have this report by Friday of this  
week, and I will appreciate it if you can accommodate me.

Very truly yours,



DR:AR  
1921-A



EXHIBIT F.

April 9th, 1952

David Robinson  
56 Bay Street  
St George, S.I., N.Y.

Re: 425 W. Olive St.  
Sec. 2, Bl. 36, Lots 63-64

Dear Sir:

Your letter of April 7th, 1952 re 425 W. Olive Street, Sec. 2, block 36, Lots 63-64 received. An inspection of the above premises made April 9th, 1952 reveals the following:

1st Floor - 1 five room apartment  
2nd Floor - 1 five room apartment  
3rd Floor - 1 four room apartment

Certificate of Occupancy #507 issued on September 21st, 1927 to Rowland V. Smith was for one family residence. The above property is located in Residence "A" zone which is a one (1) family area.

Yours truly  
CITY OF LONG BEACH

PJD/ec

By:  
Building Commissioner



DEPARTMENT OF BUILDINGS  
CITY OF LONG BEACH, NEW YORK

# CERTIFICATE OF OCCUPANCY

ISSUED April 25th 1952 TO Leatrice & Marion Wilson  
PREMISES 425 W. Oline St 2 36 63-64  
ADDRESS SEC. BLOCK LOTS

in accordance with Chapter 10 of the Building Code of the City of Long Beach.

THIS CERTIFIES that the ~~EXISTING~~ <sup>NEW</sup> BUILDING situated on the above mentioned premises has been completed and conforms substantially to the approved plans and specifications on file in my office and to the requirements of Chapter 10 of the Building Code and permission is hereby granted for its occupancy for the purpose specified below:

	TYPE BUILDING	ZONE	USE	VARIANCE	OTHER DETAIL
	Dwelling	Res "B"	Three Family		Stucco
Floors	1st Fl - Five rooms & Bath				
	2nd Fl - 4 rooms & Bath				
	3rd Fl - Four rooms & Bath				

Certificate No. "A"

Building Permit No. 811 Existing 1952

P. J. Quinn  
Building Commissioner of Long Beach



EXHIBIT H.  
ROBERT I. KLEINER  
COUNSELOR AT LAW  
ONE WEST PARK AVENUE  
LONG BEACH, N. Y.  
PHONE LONG BEACH 6-0833

April 26, 1952

Honorable P. J. Devine  
Building Commissioner of  
the City of Long Beach  
City Hall  
Long Beach, New York

Re: 425 West Olive Street

Dear Sir:

I represent Beatrice Wilson and Marion Wilson of  
425 West Olive Street, Long Beach, New York, who  
are the owners of the said property.

Will you kindly arrange to inspect the above  
premises, so my client may secure a corrected  
Certificate of Occupancy. This building was  
erected in September 21, 1927 as a three family  
house, and has been used continuously from that  
date to the present time as such.

Very truly yours,

RIK:jl

*Robert I. Kleiner*  
Robert I. Kleiner

*01/10/52*  
*James per [illegible] [illegible]*  
*[illegible] attached*

EXHIBIT I.

Inter - Office Memo

April 25th, 1952

From: Corporation Counsel B.M. Bailey  
To: Building Commissioner P.J. DeVine  
Re: Certificate of Occupancy  
Sec. 2, Bl. 36, Lots 63-64  
425 W. Olive St.

Plans filed April 26th, 1926 in the Building Department indicate a one family house. Certificate of Occupancy issued September 21st, 1927 by Building Commissioner at time, one Edward A. Stimpson, indicates a one family house. On the same day inspection report signed by same Edward A. Stimpson indicates a three family house consisting of one six, one five and one four room apartments. Water record throughout the years to date indicate same physical condition.

Under the circumstances it is my opinion that at this date 25 years after construction of house and after such use as a three family house, nothing should be done to disturb use as a three family house so long as this house shall remain in existence.

Bearing in mind that we should always concern ourselves with what is expedient for the public, it is my opinion that a correct Certificate of Occupancy namely one for a three family house should be issued to replace Certificate of Occupancy issued September 21st, 1927 which was manifestly incorrect in describing building as a one family residence.

BMB/ec

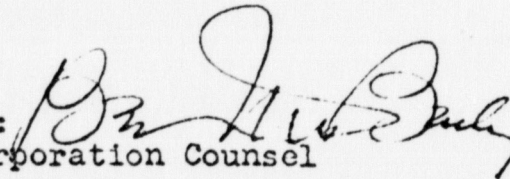
By:   
Corporation Counsel



EXHIBIT J.

ZONING LAW  
BUILDING CODES

and various other codes and ordinances  
administered by the Building Department

of the

CITY OF LONG BEACH  
NEW YORK.

1931

---

Frank Frankel  
Mayor

George I. Cullmer, Jr.  
Building Commissioner

---

Price \$1.50

## EXHIBIT J

### ZONING LAW, CITY OF LONG BEACH, NEW YORK

ing nearest such lot line. Such side yard shall extend for its required width from the front yard or if there is no front yard, then from the street line to the rear yard.

### RESIDENCE A DISTRICT

**Section 3. a. Uses.** Within any Residence "A" District as indicated on the Building Zone Map no building or premises shall be used and no building or structure shall be altered or erected which is intended or designed to be used in whole or in part for other than one or more of the following specified uses:

1. A one family detached house for one housekeeping unit only.

2. A Federal, State, County, Municipal or public utility building or structure, if approved by the Board of Appeals as hereinafter provided.

3. Municipal recreation building, playground or park.

4. College, library, fire station or school.

5. Church or other places of worship, convent, parish house or Sunday School building.

6. Charitable institution, hospital or sanitarium other than one of a correctional nature. Such building shall be located not less than twenty-five (25) feet from every lot and street line.

7. Accessory uses customarily incident to any use permitted by the provisions of this section.

8. Private garage, provided that no business service or industry connected directly or indirectly with motor vehicles is carried on. One commercial vehicle of one and one-half tons capacity or less may be stored by its owner in his private garage, but space therein shall not be rented for a commercial vehicle.

9. A stable, if approved by the Board of Appeals as hereinafter provided. Such stable shall not contain space for more



## EXHIBIT J

### ZONING LAW, CITY OF LONG BEACH, NEW YORK

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**g. Accessory Building.** An accessory building for accessory uses permitted herein, including a private garage not over fifteen (15) feet high may occupy in the aggregate not over forty per cent. (40%) of the required rear yard area.

**h. Density.** No residence shall be erected or altered to make provision for more than one family for each five thousand (5,000) square feet of the area of the lot.

### RESIDENCE B DISTRICT

**Section 4. a. Uses.** Within any Residence "B" District as indicated on the Building Zone Map no building or premises shall be used and no building or structure shall be altered or erected which is intended or designed to be used in whole or in part for other than one or more of the following specified uses

**1.** Any use permitted in this Ordinance in any Residence "A" District.

---

**b. Height.** The limit of height of a building shall be two stories and an attic above a basement or cellar, but not over forty (40) feet, except that the limit of height of a church, library, school, or municipal or institutional building shall be four stories but not over sixty (60) feet.

**c. Front Yard.** There shall be a front yard, the depth of which shall be at least twenty (20) feet back of the street line. In case of a corner lot a front yard shall be required on each street on which the lot abuts.

**d. Side Yard.** There shall be a side yard along each lot line and it shall be at least five (5) feet in width on one side of the building and eight (8) feet on the other, and extend unobstructed from the front yard to the rear yard.

**e. Rear Yard.** There shall be a rear yard on every lot and it shall be at least twenty (20) feet deep behind a building, except that first-story rear projections from the building, not exceeding fifteen (15) feet in height, may extend to within fifteen (15) feet of the rear lot line.

## EXHIBIT J

### ZONING LAW, CITY OF LONG BEACH, NEW YORK

Where a lot is more than one hundred (100) feet deep, one-half of the additional depth of the lot in excess of one hundred (100) feet shall be added to such rear yard depth; but in no case shall a rear yard in excess of forty (40) feet be required.

Where a lot is less than one hundred (100) feet deep, one-half of the diminution in depth of the lot below one hundred (100) feet may be subtracted from such rear yard depth; but no part of such rear yard shall be less than twelve (12) feet in depth.

**f. Building Area.** The building area shall not exceed forty-five per cent. (45%) of the lot area.

**g. Accessory Building.** An accessory building for accessory uses permitted herein, including a private garage not over fifteen (15) feet high, may occupy in the aggregate not over forty per cent. (40%) of the required rear yard area.

**h. Density.** No residence shall be erected or altered to make provision for more than one family for each four thousand (4,000) square feet of the area of the lot.

---

### RESIDENCE C DISTRICT

**Section 5. a. Uses.** Within any Residence "C" District as indicated on the Building Zone Map no building or premises shall be used and no building or structure shall be altered or erected which is intended or designed to be used in whole or in part for other than one or more of the following specified uses:

1. Any use permitted in this Ordinance in any Residence "A" or "B" District.

2. A detached house for two housekeeping units only.

**b. Height.** The limit of height of a building shall be two stories above a basement or cellar, but not over forty (40) feet except that the limit of height of a church, library, school, or municipal or institutional building shall be four stories but not over sixty (60) feet.



EXHIBIT K.

June 11, 1968

Mr. & Mrs. Joseph and Hannah Kotkin  
425 W. Olive St.  
Long Beach, N.Y.

Dear Sir & Madam:

Re: 425 W. Olive St.  
Long Beach, N.Y.

Sec. 59-B1.36-Lots 63/64

Kindly call this office at your earliest convenience, for the purpose of making an appointment with me, regarding the above premises.

Very truly yours,

---

David Linden  
Building Commissioner

Ge.1-1000

DL:r

6/13/68

*Mr. Kotkin was in this office 6 days.  
He was advised that his property is zoned for  
one family.*

*4*

EXHIBIT L.

No. 348749

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO <b>Mr. &amp; Mrs. L. &amp; L. Walsch</b>		POSTMARK OR DATE
STREET AND NO. <b>425 W. Olive St.</b>		
P.O., STATE AND ZIP CODE <b>Long Beach, N.Y.</b>		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Return to whom and date delivered	15¢
	2. Return to whom, date and where delivered	25¢
DELIVERY TO ADDRESSEE ONLY		15¢
SPECIAL DELIVERY (5 pounds or less)		30¢

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL (See other side)

POB Form 3800  
Sep 1968

November 7, 1969

Mr. & Mrs. L. & L. Walsch  
425 W. Olive St.  
Long Beach, N.Y.

Dear Sir & Madam:

Res 425 W. Olive St.  
Long Beach, N.Y.

Sec. 59-B1.36-L.63/64

Inspection of the above premises reveals  
the following violation:

There are three family units in a building zoned  
for one family occupancy only.

You are hereby directed to take the neces-  
sary steps to correct this violation within ten  
(10) days or legal action will be instituted.

Kindly notify this office of action taken.

Very truly yours,

Eli Katz  
Building Commissioner  
City of Long Beach, N.Y.

FF:R  
Capt. rrr

*Reinspected  
11/24/69  
B.L. 2 Katz -14*

Exhibit "L"

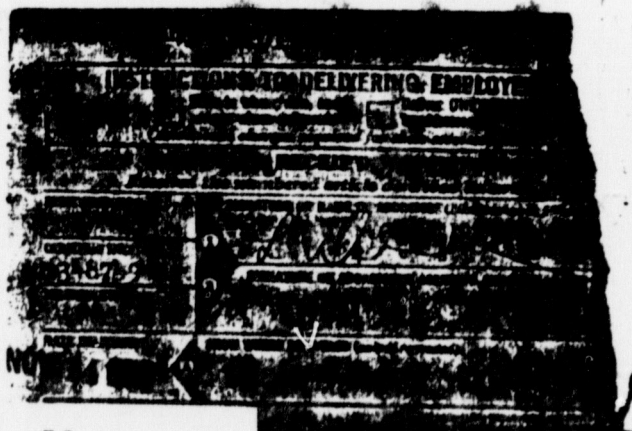




EXHIBIT M.

THE CITY OF LONG BEACH, NEW YORK

CITY HALL, 11501 (516) 431-1000

December 24, 1970

Mr. & Mrs. Lawrence Walsh  
425 West Olive Street  
Long Beach, New York

Re: 425 West Olive Street  
Sec. 59 Block 36 Lot 63 & 64

Dear Mr. & Mrs. Walsh,

In examination of the official files of the Building Department of Long Beach, covering premises 425 West Olive Street, Long Beach, New York indicating that your building was erected on or about September 1, 1927. as a one family house; Certificate of Occupancy #507 was issued to Mr. Rowland V. Smith on September 21, 1927.

Thereafter a Certificate of Occupancy #A-811 was issued on April 25, 1952 by the then Building Commissioner of Long Beach permitting the building to be used as a three family dwelling.

I am informed by the Corporation Council's office that the latter Certificate of Occupancy dated April 25, 1952 was issued improperly and illegally and contrary to the zoning ordinance in existence at that time.

I must advise you that you are presently using the said premises as a three family house in a Residence (B) Zone which permits only the use as a one family house.

This will serve to advise you that as Building Commissioner and Director of Property Conservation, I hereby revoke and recall the said C.O. #A-811 issued on April 25, 1952.

Inspection of the property will be made on or about January 15, 1971 to ascertain the use of said property.

Very truly yours,

*David Linden*  
David Linden  
Building & Conservation  
Commissioner

DL:ff

Copy: City Manager  
Corporation Councilor

EXHIBIT N.

(516) 880-0080-81-82

## STATION REALTY CO.

27 WEST PARK AVENUE

LONG BEACH, N. Y. 11561

AT L.I.R.R. STATION

RECEIVED  
BUILDING DEPARTMENT

JUN 15 1972

CITY OF LONG BEACH  
NEW YORK

June 14, 1972

Mr. Arthur Zimmerman  
Commissioner  
City of Long Beach  
Long Beach, New York 11561

Re: 425 West Olive Street  
Long Beach, New York

Dear Mr. Zimmerman:

Enclosed please find a photostated copy of a  
certificate of occupancy for the above address.

I am requesting ; for Lawrence Walsh the owner,  
for the second time a certificate of compliance.

I am herewith enclosing a check in the amount of  
fifteen dollars made payable to the City of Long  
Beach for the certificate of compliance.

Very truly yours,

*Phyllis Axelrod*  
Phyllis Axelrod  
STATION REALTY CO.

encl  
c.c. Judge Kleiner  
A. Feuerstein, Esq.



EXHIBIT O.

June 22, 1972

Station Realty Co.  
Att. Mrs. Phyllis Axelrod  
27 West Park Avenue  
Long Beach, N.Y.

Re: 425 West Olive Street  
Sec. 59-B1.36-L.63/64

Dear Mrs. Axelrod:

Your letter of June 14, 1972 requested a Certificate of Compliance for the above premises and enclosed a copy of Certificate of Occupancy, No. A-811, dated April 25, 1952 for the same dwelling.

This Department has determined that the aforementioned Certificate of Occupancy for three (3) families was issued improperly and illegally, and contrary to the Zoning laws existing at that time. In his letter to the owner, dated December 24, 1970 the then Building Commissioner revoked and recalled the illegal Certificate of Occupancy.

We experienced considerable difficulty in gaining entry to the premises and finally had to resort to acquisition of a search warrant on April 27, 1972, in order to make an inspection.

On the basis of our inspection we notified the owners on May 12, 1972 that the premises were in violation of the Zoning laws. To date, no effort has been made to reduce the number of units in the building, and no application for a variance has been made to the Zoning Board of Appeals. In fact, the owners recently vacated their unit, moved out of state, and immediately rented the unit to a third tenant, thus maintaining the status quo.

Under the circumstances and until such time as the matter regarding the illegal Certificate of Occupancy is resolved, by the owners or the Court, and the Zoning violation corrected, no action will be taken by this Department towards issuance of a Certificate of Compliance.

Very truly yours,

Arthur Zimmerman, Commissioner  
Dept. of Bldgs. & Property Cons.

AZ:r

Encl. check #1217-dated 6/14/72

BUILDING DEPARTMENT  
CITY OF LONG BEACH, N.Y.  
Inspection Report

EXHIBIT P.

DATE

6/8/72

ZONE

B-1 Jan

ADDRESS

425 W. Olive

Sec. 59

Block 36

Lots 63/64  
+

Owner

Lawrence + Loretta Walsh

Address

208 Riverside Ave.

Phone

Lynnhurst, N.J.

To Station Realty Agent  
27 W. Park Ave  
Long Beach, N.Y.  
att. Mrs. Phyllis A. Ford

The Following was Noted:  
Description of Violations

CITATION #

Owner has moved out of 425 W. Olive - rented  
the unit vacated - and has moved to the  
above-indicated address.

Certified mail sent to the owner at the 425 W. Olive  
address has been returned to us by the Post Office.

Notice of Violations should now be mailed to  
the owner's New Jersey address and also to  
the above-indicated real estate agent who  
represents the owners in their attempts to  
sell the property. See attached sheet

Copies to: \_\_\_\_\_

FIELD REPORT

Signed

J. Daparin  
Inspector



EXHIBIT Q.



ZONING BOARD OF APPEALS  
**CITY OF LONG BEACH**

LONG BEACH, N. Y.

(516) 431-1000

October 2, 1972

Mr. Lawrence Walsh,  
425 West Olive Street,  
Long Beach, Long Island

Re: 425 West Olive St.,  
Long Beach, N.Y.

Dear Mr. Walsh:

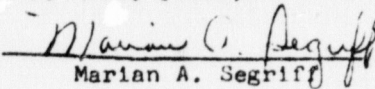
We have tried unsuccessfully to contact you relative to your application to continue to use the above premises as a three family house.

We are in receipt of your check dated June 6, 1972 for \$70.00, the Board of Appeals Application, list of neighbors, sketch of area involved, but you have failed to return certified receipts of Notices forwarded to the abutting property owners and the Affidavit, signed by a Notary Public, that all the neighbors on the list of property owners (within a radius of 150') have been notified.

The next Hearing will be scheduled sometime in November, 1972, but your case cannot be placed on the Calendar until the rest of the papers, as described above are received in this office, no later than and preferably before ten days prior to the November meeting, which will be established after the October 19, 1972 Hearing.

Your cooperation as to your intentions to comply with the instructions herewith attached or your advice as to what procedure you intend to take. In the event that you do not wish to comply, we will return your check and papers.

Very truly yours,

  
Marian A. Segriff  
Secretary

mas.  
R-404-B.

Services of three (3) copies of  
the within Brief  
hereby admitted this 30th day

of January 1975

One + One  
Attorney for